

## GA HMIS Agency Participation Agreement

\_\_\_\_\_ (“Agency”) has elected to participate in the Homeless Management Information System (“GA HMIS”). The HMIS software is licensed by the Georgia Housing Finance Authority, who has designated it to be solely administered by the Georgia Department of Community Affairs (“DCA”). The GA HMIS is a database that collects and maintains information on the characteristics and service needs of clients, which can be used to generate unduplicated and aggregate reports to determine the use and effectiveness of the services being provided to the homeless population.

In consideration of their mutual undertakings and covenants, the Agency and DCA agree as follows:

### 1. General Understandings:

- A. Definitions. In this Agreement, the following terms will have the following meanings:
- i. “Agency staff” are employees, volunteers, contractors, or any other agents of the Agency.
  - ii. “Client” is a person receiving or requesting services or a referral from the Agency.
  - iii. “Client Information” refers to both Non-Identifying Information and Identifying Information about a Client entered into GA HMIS.
  - iv. “Non-Identifying Information” is Client information that does not include Identifying Information.
  - v. “DCA staff” are employees, contractors or agents of DCA who DCA designates to administer the GA HMIS and provide support to Agency as outlined in this Agreement.
  - vi. “End User” is Agency staff with authority to access GA HMIS by signing the GA HMIS End User Agreement.
  - vii. “Enter(ing)” or “entry” is the entry of any Client Information into the GA HMIS.
  - viii. “Identifying Information” refers to Client information in the GA HMIS that:
    - Allows identification of an individual directly or indirectly;
    - Can be manipulated by a reasonably foreseeable method to identify a specific individual; or
    - Can be linked with other available information to identify a specific client.
  - ix. “Participating Agency” refers to any Agency that has signed this Agreement.
  - x. “Share(ing),” or “information share(ing)” refers to providing Client Information in GA HMIS to other Participating Agencies through the GA HMIS platform.
  - xi. “Vendor” is the organization that contracts with DCA to provide the GA HMIS software.

B. DCA's Access and Use. DCA staff may use Client Information to administer and manage GA HMIS, conduct analysis, coordinate services, test, problem identification and resolution, data aggregation and analysis, prepare reports in a de-identifying form, and carry out other duties regarding administration of the GA HMIS.

C. Incorporation and Modification of Other Documents. The GA HMIS End User Agreement, the GA HMIS Standard Operating Policies and Procedures, GA HMIS Privacy Policy, and the GA HMIS Custom Development Policy are hereby incorporated into this Agreement and attached as Appendices A, B, C, D and E respectively. Any reference to "Agreement" in this document includes reference to these Appendices. DCA may amend the Appendices from time to time with input from the GA HMIS Steering Committee and Agency is bound by such amendments. Notice of any amendments will be done through DCA's website.

Notwithstanding any other provision of this Agreement, Agency's use of and participation in the GA HMIS, and the use, disclosure, and submission of data to and from the GA HMIS shall, at all times, be governed by the GA HMIS Privacy Policy and the GA HMIS Policies and Procedures. The GA HMIS Privacy Policy shall control any disagreements between the referenced documents.

## **2. Confidentiality:**

A. Agency shall not:

- i. Enter Client Information into the GA HMIS that Agency is not authorized to enter, or
- ii. Disclose Client Information that Agency is not authorized to disclose.

By entering Client Information into the GA HMIS, Agency represents that it has the authority to enter such Client Information into the GA HMIS. To the best of Agency's knowledge, any information entered into the GA HMIS does not violate any of the Client's rights, under any relevant federal, state, or local confidentiality laws, regulations or other restrictions applicable to Client information.

If Agency is subject to any laws or requirements that restrict Agency's ability to disclose or enter certain data elements into GA HMIS, Agency will ensure that any entry or disclosure complies with all applicable laws or other restrictions. Agency is solely responsible for determining if any entry or disclosures of Client Information are restricted under any state or federal laws and regulations.

B. To the extent that Client Information entered by Agency into the GA HMIS is or becomes subject to disclosure restrictions, Agency will immediately inform DCA in writing of such restrictions and submit by mail to the address given herein for written notices.

C. DCA will not be liable to Agency or any third parties for any claims relating to Agency's disclosure or entry of Client Information into GA HMIS.

## **3. Display of Notice:**

Pursuant to the 2004 HMIS Data and Technical Standards Final Notice published by the Department of Housing and Urban Development ("HUD") on July 30, 2004, Agency will prominently display at each intake desk (or comparable location) the GA HMIS Privacy Policy, which explains generally the reasons for collecting Identifying Information in the GA HMIS and the Client's rights associated with providing Agency with Identifying Information. Agency shall ensure that each Client understands his or her rights. Additionally, if Agency maintains a public webpage, the current version of the Privacy Policy must be posted on the webpage. The current form of Privacy Policy,

which may be modified from time to time at DCA's discretion in consultation with the Collaborative, is attached to and incorporated into this Agreement by reference, and is available from DCA or on its website, <https://www.dca.ga.gov/node/4509/documents/2088>

#### **4. Information Collection, Release and Sharing:**

A. Collection of Identifying Information. Agency may collect Identifying Information and enter it into GA HMIS for purposes consistent with this Agreement.

B. Sharing. The GA HMIS Implementation operates on the basis of implied consent to collect and share information. Agency is required to provide an explanation to Client that information will be shared and how it will be used as outlined in the GA HMIS Privacy Policy.

If a Client elects to opt out of sharing their information, the Agency should have the client complete the GA HMIS Client Data Sharing Opt-Out Form. Information may not be shared with other agencies except as may be allowed in the Privacy Policy. Agency shall keep all copies of any previous signed Consent forms and Opt-Out Forms for a period of seven (7) years after the Client last received services at or from the Agency. Such forms shall be available for inspection and copying by DCA and/or the U.S. Department of Housing and Urban Development, at any time.

C. Refusal of Services. Agency may not refuse or decline services to a Client who:

- i. objects to the entry of his or her Client Information in the GA HMIS; or
- ii. refuses to share his or her personal information with the Agency or cannot remember certain information.

However, some information may be required by the program to determine eligibility for housing or services, to assess needed services, or to fulfill reporting requirements.

#### **5. Client Inspection/Correction:**

Upon receipt of a written request from a Client, Agency will allow the Client to inspect and obtain a copy of his or her own Client Information during regular business hours. Agency is not required to provide a Client access to information (a) compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative action or proceeding; (b) about another individual; (c) obtained under a promise of confidentiality if disclosure would reveal the source of the information; and (d) which, if disclosed, would be reasonably likely to endanger the life or physical safety of any individual. Agency must allow a Client to correct his or her own Client Information that is inaccurate or incomplete; however, prior to correcting such information, Agency shall consult with DCA to ensure proper coordination between the Agency's response and the capabilities of the GA HMIS system, unless the requested correction is a routine correction of a common data element for which a field exists in GA HMIS (e.g., date of birth, prior residence, social security number, etc.). Agency is not required to remove any Client Information as a result of a correction, but may, in the alternative, mark Client Information as inaccurate or incomplete and supplement it with additional information.

#### **6. Security:**

Agency shall maintain the security and confidentiality of Client Information and is responsible for the actions of its employees, contractors, volunteers, or agents and their proper training and

supervision. DCA may conduct periodic assessments of Agency to monitor its compliance with this Agreement. Agency must take the following steps to maintain security and confidentiality:

A. End Users. Agency will permit only End Users to have access to the GA HMIS for legitimate business purposes (such as to provide services to the Client, to conduct evaluation or research, to administer the program, or to comply with regulatory requirements). Agency will limit End Users' access to only those records that are immediately relevant to their work assignments.

Prior to permitting an End User access to GA HMIS, Agency will require the End User to sign an End User Agreement. Agency will comply with and enforce the End User Agreement and will inform DCA immediately in writing, in no event later than 24 hours, of an End User in violation of the End User Agreement, system security or client confidentiality. The notification should be sent to the address listed herein for notices.

Agency will permit Agency staff access to GA HMIS only with use of an individually assigned End Username and a password, which the End User may not share with others. Written information pertaining to End User access (e.g., End Username and password) shall not be stored or displayed in any publicly accessible location. Passwords shall be between eight and twelve characters long and include at least one non-letter and one non-number character. Passwords shall not be, or include, the End Username, the HMIS vendor's name, the HMIS name, the Agency's name, or consist entirely of any word found in the common dictionary or any of the forenamed words spelled backwards. The use of default passwords on initial entry into GA HMIS is allowed so long as the End User changes the default password on first use. End Users must not be able to log on to more than one workstation at a time or be able to log on to the network at more than one location at a time. Passwords and End Usernames shall be consistent with guidelines issued from time to time by HUD and DCA.

B. Breaches of Security or Confidentiality. If DCA finds that an Agency has had a breach of system security or client confidentiality, is in violation of this Agreement, or an Agency's End User has violated the End User Agreement, DCA may place the Agency in a probation period during which DCA will provide technical assistance to help prevent further breaches.

Probation shall remain in effect until DCA has evaluated the Agency's security and confidentiality measures and found them compliant with this Agreement. Subsequent violations of system security may result in the Agency's suspension from GA HMIS.

C. Computers: Security for data maintained in the GA HMIS depends on a secure computing environment. Computer security is adapted from relevant provisions of the Department of Housing and Urban Development's ("HUD") HMIS Data and Technical Standards Proposed Rule (Docket No. FR 5475-P-01- Fed. Reg. Vol. 76, No. 237 (December 9, 2011/Proposed Rules). Agencies are encouraged to directly consult that document for complete documentation of HUD's standards relating to HMIS, and hereby agree to incorporate any changes to HUD policy into their computing environment on the timeline specified by HUD. Agency will allow access to the GA HMIS only from computers which are:

- i. protected from viruses by commercially available virus protection software (a) that includes, at a minimum, automated scanning of files as they are accessed by End

Users on the system on which the HMIS application is accessed and (b) with virus definitions that are regularly updated from the software vendor;

- ii. protected with a secure software or hardware firewall between, at least, the workstation and any systems (including the internet and other computer networks) located outside of the Agency;
- iii. maintained to ensure that the computer operating system running the computer used for the HMIS is kept up to date in terms of security and other operating system patches, updates, and fixes;
- iv. accessed through web browsers with 128-bit encryption (e.g., Internet Explorer, and Google Chrome). Some browsers have the capacity to remember passwords, so that the End User does not need to type in the password when returning to password-protected sites. This default shall not be used with respect to the HMIS; the End User is expected to physically enter the password each time he or she logs on to the system; and
- v. staffed at all times when in public areas. When computers are not in use and staff is not present, steps should be taken to ensure that the computers and data are secure and not usable by unauthorized individuals. These steps should minimally include (a) logging off the HMIS system, (b) physically locking the computer in a secure area, (c) shutting down the computer entirely, or (d) using a password protected screen saver.

D. Hard Copies: Agency must secure any paper or other hard copy containing Identifying Information that is generated either by or for the HMIS, including, but not limited to reports, data entry forms and signed Opt-Out forms. Any paper or other hard copy generated by or for the GA HMIS that contains Identifying Information must be supervised at all times when it is in a public area. If Agency staff is not present, the Identifying Information must be secured in areas that are not publicly accessible. Agencies wishing to dispose of hard copies containing Identifying Information must do so by shredding the documents or by other equivalent means approved by DCA.

E. Training/Assistance: Agency will ensure End Users have received the required GA HMIS Privacy, Security and Confidentiality Training and the End User Onboarding Training prior to accessing the GA HMIS system. Agency will participate in such training as is provided from time to time by DCA. Representatives of DCA will be reasonably available during DCA's defined weekday business hours for technical assistance (e.g., troubleshooting and report generation).

## **7. Information Entry Standards:**

A. Client Information entered into GA HMIS by Agency will be truthful, accurate, complete and timely to the best of the Agency's knowledge.

B. Agency will not solicit or enter Client Information into GA HMIS unless the information is required for a legitimate business purpose allowed by this Agreement, including but not limited to, providing services to the Client, conducting evaluation or research, administering the program, or complying with regulatory requirements.

- C. Agency will only enter Client Information into GA HMIS with respect to individuals it serves or intends to serve, including through referral.
- D. Agency will enter Client Information into GA HMIS within forty-eight hours (48) of data collection.
- E. Agency will not alter, or over-write Client Information entered by another Participating Agency without the proper documentation.

DCA reserves the right to delete or segregate Client Information or take any other appropriate measures to maintain the accuracy and integrity of the GA HMIS or to avoid compromising the GA HMIS' goal of maintaining unduplicated counts of Clients.

**8. Use of the GA HMIS:**

- A. Agency will not access Identifying Information for any individual for whom services are neither being sought nor provided by the Agency.
- B. Agency may disclose non-Identifying Information for funding or planning purposes.
- C. Agency and DCA will report only non-Identifying Information in response to requests for information from GA HMIS, including but not limited to requests for information related to research, unless otherwise permitted by this Agreement or required by law.
- D. Agency will not use the GA HMIS in violation of any federal or state law, including, but not limited to, copyright, trademark and trade secret laws, and laws prohibiting the transmission of material, which is threatening, harassing, or obscene. DCA purchased software licensing from Vendor to implement the GA HMIS. Without limiting the foregoing covenant, Agency agrees that the data and information related to the software licensed by Supplier, and related documentation and support services, may be confidential and proprietary information ("Confidential Information") of the Supplier and agrees to use such Confidential Information only in connection with Agency's authorized use of the GA HMIS and support services and further agrees not to disclose such Confidential Information to any third party, other than as required by law. Furthermore, Agency acknowledges and agrees that Vendor will retain all right, title, interest and ownership in and to the HMIS software, including any customization or modification thereof, and Agency will not copy any documentation related to the HMIS software other than for internal business purposes, nor shall Agency disassemble, decompose or reverse engineer the HMIS software, except as otherwise provided herein, use the HMIS software on behalf or for the benefit of any other person or entity or otherwise infringe upon any of the Vendor's trademarks, trade secrets, copyrights, patents or other intellectual property rights. Agency shall include all Supplier copyright and other proprietary notices on any copy of the documentation related to HMIS software reproduced, used, or made available by Agency.
- E. Agency will not use the GA HMIS to defraud federal, state or local governments, individuals or entities, or conduct any illegal activity.
- F. Agency shall not use the GA HMIS to aggregate data to compare the performance of other participating Agencies in other CoCs, without the express written consent of DCA and each of the Participating Agencies being compared.
- G. Notwithstanding any other Section of this Agreement, the parties may use or disclose for any lawful purpose information that: (a) is in the possession of the party prior to the time of the



disclosure to the party through the HMIS and was not acquired, directly or indirectly, from the HMIS; or (b) is made available to the party by a third party who has the legal right to do so.

**9. Proprietary Rights of the HMIS:**

A. CoC Administrators or DCA Staff shall assign passwords and access codes for all Agency Staff that meet other privacy, training and conditions contained within this Agreement.

B. Agency or DCA Staff shall not assign passwords or access codes to any other person not directly connected to or working for the Agency.

C. Agency shall be solely responsible for all acts and omissions of its End Users, and all other individuals who access the GA HMIS either through the Agency or by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, from the Agency or any of the Agency's End Users, with respect to the GA HMIS and/or any confidential and/or other information accessed in connection therewith, and all such acts and omissions shall be deemed to be the acts and omissions of the Agency. Each Agency shall ensure:

- i. that its End Users have received training regarding the confidentiality of GA HMIS information under all applicable federal, state, and local laws and agree to protect the Information in compliance with such laws and this Agreement;
- ii. that its End Users shall only access the GA HMIS for purposes approved by the Agency and that are consistent with this Agreement;
- iii. that its End Users have agreed to hold any passwords, or other means for accessing the GA HMIS, in a confidential manner and to release them to no other individual or entity. Agency shall ensure that all End Users understand that sharing passwords and other means for accessing the GA HMIS is expressly prohibited;
- iv. that its End Users agree and understand that their failure to comply with the terms of this Agreement may result in their exclusion from the GA HMIS and may constitute cause for disciplinary action by the Agency; and
- v. that it has restricted access to the GA HMIS only to the End Users that the Agency has identified pursuant to this Section.

D. Agency shall inform the CoC Administrator or System Administrator at DCA via email to terminate the rights of an End User immediately upon the End User's termination or resignation from his or her position. The Agency is responsible for following up to verify that the End User is removed from the system. It shall be the responsibility of the End User to ensure their Username and passwords are current.

E. Agency shall be diligent not to cause in any manner or way, corruption of the GA HMIS, and Agency agrees to be responsible for any damage it may cause.

**10. Data Collection, Reporting & Evaluation Sub -Committee:**

DCA will consult with the Data Collection, Reporting & Evaluation Committee under the Georgia HMIS By-Laws from time to time regarding issues such as revision to the form of this Agreement.

**11. Limitation of Liability and Indemnification:**

Note: Under sections 13 and 14, the term DCA includes both GHFA and DCA. It is the intention of the parties that all limitations of liability and indemnification agreed to apply to DCA also apply to GHFA. Parties acknowledge that this is an essential provision of this Agreement.

A. Except as provided in Section 13(c), no party to this Agreement shall assume any additional liability of any kind due to its execution of this Agreement or its participation in the GA HMIS system. It is the intent of the parties that each party shall remain liable, to the extent provided by law, regarding its own acts and omissions; but that no party shall assume additional liability on its own behalf or liability for the acts of any other person or entity through participation in GA HMIS except for the acts and omissions of its own employees, volunteers, agents or contractors unless any such liability is expressly created herein. The parties specifically agree that this Agreement is for the benefit of the parties only and creates no rights in any third party.

B. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL DCA BE LIABLE TO AGENCY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUES, LOSS OF USE, LOSS OF INFORMATION/DATA, OR OTHER DAMAGES NOT SPECIFIED HEREIN. This is agreed whether a claim for any such liability or damages is premised upon breach of contract, breach of warranty, negligence, strict liability, equitable theory, tort, or any other theories of liability, even if DCA has been apprised of the possibility or likelihood of such damages occurring. Parties acknowledge that this is an essential provision of this Agreement, with adequate consideration made.

C. Agency agrees to indemnify, defend and hold harmless DCA including its directors, officers, employees, representatives, and agents from and against any and all claims and liabilities (including, without limitation, all damages, costs, and expenses, including legal fees and disbursements paid or incurred) arising from alleged or actual intentional acts or omissions, negligence, or strict liability of Agency, its directors, officers, employees, representatives, or agents, or Agency's breach of this Agreement. This Section shall survive the termination of this Agreement.

D. Without limiting any other provision of this Agreement, Agency and its End Users shall be solely responsible for all decisions and actions taken or not taken involving services, treatment, patient care, utilization management, and quality management for their respective Clients resulting from or in any way related to the use of the GA HMIS or the Information made available thereby. Agency and End Users shall have no recourse against, and hereby waive, any claims against DCA for any loss, damage, claim or costs relating to or resulting from its own use or misuse of the HMIS.

E. GA HMIS uses available technology to match an Agency's Client with other records in the GA HMIS that a Participating Agency previously entered about Client. Because Client information is maintained in multiple places and because not all information is kept in a standard fashion, it is possible that false matches may occur or that there may be errors or omissions in the information provided to Agency. To that end, it is incumbent upon the Agency and its End Users to verify the Client's information before the information is relied upon in providing services to a Client. Neither DCA nor the GA HMIS verifies or reviews the information transmitted through the GA HMIS for accuracy or completeness. Further, neither DCA nor the HMIS make any representations or promises regarding the continued participation of any particular Agency in the HMIS. Agencies may be added to or





F. deleted from the HMIS at any time and such changes may be beyond the control of DCA or the HMIS and may occur without prior notice to Agency.

G. GA HMIS is an information management tool only, it contemplates and requires the involvement of Agencies, and End Users that are qualified to maintain, collect and enter information into the HMIS. DCA has not represented its services as having the ability to perform any tasks that constitute the practice of medicine or of other professional or academic disciplines. DCA shall not be responsible for any errors, misstatements, inaccuracies, or omissions regarding the content of the GA HMIS. Agency assumes all risk for selection and use of the content in the GA HMIS.

H. All data to which access is made through the GA HMIS originates from Agencies, and not from DCA. All such data is subject to change arising from numerous factors, including without limitation, changes to Client Information made at the request of the Client, changes in the Client's condition, the passage of time and other factors. DCA neither initiates the transmission of any data nor monitors the data. Without limiting any other provision of this Agreement, DCA shall have no responsibility for, liability related to the accuracy, content, currency, completeness, content, or delivery of any data either provided by Agency, or used by Agency, pursuant to this Agreement.

I. Access to the GA HMIS and the information obtained by Agency pursuant to the use of those services are provided "as is" and "as available." Agency is solely responsible for any and all acts or omissions taken or made in reliance on the GA HMIS or the information in the GA HMIS, including inaccurate or incomplete information.

J. DCA shall not be liable for any cessation, delay or interruption of services, nor for any malfunction of hardware, software or equipment for whatever reason.

## **12. Disclaimer of Warranties:**

DCA makes no warranties, express or implied, including warranties of merchantability or fitness for a particular purpose, to any Agency or any other person or entity as to the services of the GA HMIS or as to any other matter.

## **13. Notice**

All notices under this Agreement to DCA will be made as follows. This Notice address may be modified in writing.

Georgia Department of Community  
Affairs 60 Executive Park South, NE  
Atlanta, GA 30329  
ATTN: HMIS Lead Manager

## **14. Prohibition of Unauthorized Customization**

For customization of any features of GA HMIS that may be desired by an Agency, Agency will first contact their local Continuum of Care, who will forward any such request to the HMIS Lead and the GA HMIS Steering Committee for approval. DCA has the absolute right to approve or disapprove of any requested modification at its' sole discretion. Such requests will not be unreasonably withheld. Agency understands that it may be liable for the complete cost of any such approved customization.

### **15. Survival**

The following provisions shall survive any termination of this Agreement: Sections 1, 2, 4B, 5, 6, 7, 8E, 9, 10, 11c, 11e, 13, 14, 15, 17. It is the intention of the parties that termination does not relieve any party of any obligations detailed in the Agreement generally up until the point the Agreement is terminated.

### **18. Term**

This agreement will continue until terminated by either party pursuant to the provisions contained herein.

### **19. Additional Terms and Conditions**

A. Agency will abide by such guidelines as are promulgated by HUD and DCA from time to time regarding administration of the GA HMIS.

B. Agency and DCA intend to abide by applicable State and Federal laws. Should DCA determine that any term of this Agreement is inconsistent with law, or that additional terms are required by law, DCA will modify the terms of this Agreement so as to comply with applicable law.

C. Neither DCA nor Agency will transfer or assign any rights or obligations in this Agreement without the written consent of the other party.

D. Either party may terminate this Agreement with thirty (30) days written notice, for any reason. Either party may also terminate this Agreement immediately upon a material breach of this Agreement by the other party, including but not limited to a breach of the GA HMIS Policies and Procedures or GA HMIS Privacy Policy by Agency. Upon termination of this Agreement, Agency shall remain liable for (and nothing in this Agreement shall prevent DCA from recovering) any fees, costs, or expenses that have been incurred prior to the termination of this Agreement.

E. Upon termination of this Agreement, copies of information entered by Agency will be provided to Agency upon written request to DCA within 60 days after termination. Information will be provided upon a mutually agreed format. Unless otherwise specified in writing, copies of data will be delivered to Agency within 60 days of receipt of the written request. DCA may charge Agency for DCA's actual costs to provide such data to Agency. DCA and the remaining Participating Agencies will maintain their rights to use all of the information previously entered by Agency except to the extent a restriction is imposed by the Client or applicable law.

F. Except as otherwise provided, no action taken by either party, or its officers, employees or agents, pursuant to this Agreement, shall be deemed to constitute an action of the other party, or shall be construed to place the parties in a relationship of partners, joint ventures, principal and agent, or employer and employee, or shall be deemed to confer upon either party any express or implied power, right or authority to enter into any agreement or commitment, express or implied, or to incur any obligation or liability on behalf of the other party except as expressly provided herein. DCA and Agency intend and agree that they and their respective agents or employees shall serve as independent contractors and not as employees of the other party, and this Agreement shall not be considered a hiring by either party or a contract of employment.

G. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions of this Agreement may be waived, only by a written instrument executed by the Parties, or in the case of a waiver, by the party waiving compliance.

H. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a further or continuing waiver of any such condition or breach of any other condition or the breach of any other provision, term, covenant, representation, or warranty of this Agreement.

I. Any notice required or permitted to be given under this Agreement shall be conclusively deemed to have been received by a party Three days after mailing, or upon actual signature date for registered/certified mail.

J. This Agreement sets forth the entire understanding between the parties with respect to the matters contemplated by this Agreement and supersedes and replaces all prior and contemporaneous agreements and understandings, oral or written, with regard to these matters.

K. If any provision of this Agreement is determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provisions of this Agreement that can be given effect without the invalid or unenforceable provisions, and all unaffected provisions of this Agreement shall remain in full force and effect as if this Agreement had been executed without such invalid or unenforceable provisions.

L. The Parties affirm that this Agreement has been entered into in the State of Georgia and will be governed by and construed in accordance with the laws of the State of Georgia, notwithstanding any state's choice of law rules to the contrary. Any action to enforce, challenge or construe the terms or making of this Agreement or to recover for its breach shall be litigated exclusively in a state court located in the State of Georgia, DeKalb County, or in Federal Court in the Northern District of Georgia.

M. Headings used in this Agreement are for the convenience of the parties and shall not be used to assist in the interpretation of the Agreement.

N. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.